

REMARKS

This paper is submitted in response to the Office action mailed on October 11, 2006. This paper amends claims 1-3, 7-9 and 13-18. Accordingly, after entry of this Amendment and Response, claims 1-18 will be pending.

I. Specification

The Office action objected to the abstract as being greater than 150 words. Applicant has amended the abstract to comply with this objection.

The Office action rejected to an incorporation of essential material in the specification by improper reference to a publication. It is respectfully submitted that the material included in the reference is not presently relied upon to overcome an objection or rejection in the claims. Hence, applicant is not amending the specification to include the material at this time. However, applicant has amended the specification to comply with proper form of the incorporation by reference under 37 C.F.R. § 1.57(b)(1). The amendment does not add any new matter.

It is respectfully submitted that the Abstract and specification are now in proper form for allowance.

II. Drawings

The Office action objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(5). Specifically Figure 2, item 30, is not mentioned in the description. Applicants have amended the specification to properly reference this item. The amendment does not add any new matter. Accordingly, it is believed that the specification and drawings are in proper form for allowance.

III. Claim Objections

The Office action objects to claims 14-18 as not being clear whether the applicant claims a method or a system. Applicants have amended claims 14-18 to refer a computer system. It is believed that claims 14-18 are now in proper form for allowance.

IV. Allowable Subject Matter

The Office action objects to claims 6, 12 and 18 in their current form, but states they would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for the indication of allowability, but wishes to keep claims 6, 12 and 18 in their present form due to the fact that it is believed that the independent claims are patentable in their current form. Applicant reserves the right to amend the claims into independent form as a later date.

V. Claim Rejections Under 35 U.S.C. § 112

The Office action rejects claims 3, 4, 9, 10, 15 and 16 under 35 U.S.C. § 112, second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 3, 9 and 15 to provide proper antecedent basis. Further, claims 4, 10 and 16 are now in compliance due to their dependency on base claims 3, 9 and 15.

VI. Claim Rejections Under 35 U.S.C. § 102

Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,740,443 to Carini (hereinafter "Carini"). In order for a reference to anticipate a claim under 35 U.S.C. § 102(b), the reference must teach each and every element of the claim. For the several reasons recited below, it is respectfully submitted that that Carini does not anticipate any of the claims.

A. Independent claims 1, 7 and 13 are not anticipated by Carini

Claims 1, 7 and 13 are independent claims from which all other pending claims depend. As amended, claim 1 involves, "after generating an inlined version of said source program, generating an updated execution frequency for each of said procedures." The Office action states that this limitation is taught in Col. 10, line 43 to Col. 11, line 25 of Carini. See *Office action*, page 5, paragraph A. The Office action further states that, "each parameter is tunable and the process is repeated until the values of the parameters are stabilized, which is updated." Applicant respectfully disagrees that this limitation is disclosed in Carini. Applicant submits that the tunable parameters in Carini merely define parameters to be used for inlining functions and call site cost functions. See *Carini*, col. 11, lines 7-10. The tunable parameters do not represent or store an execution frequency of each procedure. Nor do the tunable parameters update the execution frequency of procedures after they have been inlined. In fact, Carini is silent on this limitation.

Further, even if the tunable parameters did include execution frequency values, the tunable parameters are "all collected during the IPA collection phase for each parameter." See *Carini*, Col. 11, lines 29-30. Additionally the tunable parameters are initially collected to tune inlining for a particular architecture. See *Carini*, Col. 11, lines 26-27. Once the parameters are set for an architecture, inlining occurs and the tunable parameters are not updated during or after the actual inlining. On the other hand, claim 1 provides that the operation of updating the execution frequency occurs after the procedure has been inlined. Hence, for at least this additional reason claim 1 is patentable under 35 U.S.C. §102(b) over Carini.

As set forth above, Independent claims 7 and 13 are also rejected under 35 U.S.C. § 102(b) as being anticipated by Carini. Claims 7 and 13 substantially include the same limitations of claim 1, namely, "source program comprising procedures to generate a call graph of said source program wherein each of said procedures has a first known execution frequency." For at least the reasons cited above with respect to claim 1, Carini does not disclose all the limitations of claims 7 and 13. Thus, claims 7 and 13 are patentable under 35 U.S.C. § 102(b) over Carini.

B. Dependent claims 2-5, 8-11 and 14-17 are not anticipated by Carini

Dependent claims 2-5, 8-11 and 14-17 depend upon and contain all the limitations of independent claims 1, 7 and 13, respectively. Therefore, for at least the reasons mentioned above, Carini does not disclose each and every limitation of claims 2-5, 8-11 and 14-17. As such, claims 2-5, 8-11 and 14-17 are patentable under 35 U.S.C. § 102(b) over Carini.

VII. Conclusion

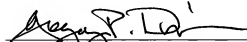
This Amendment is submitted contemporaneously with a petition for a three-month extension of time in accordance with 37 CFR § 1.136(a). Accordingly, please charge Deposit Account No. 04-1415 in the amount of \$1020, for three-month extension of time fee. The Applicant believes no further fees or petitions are required. However, if any such petitions or fees are necessary, please consider this a request therefore and authorization to charge Deposit Account No. 04-1415 accordingly.

The Applicant thanks the Examiner for his thorough review of the application. The Applicant respectfully submits the present application, as amended, is in condition for allowance and respectfully requests the issuance of a Notice of Allowability as soon as practicable.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Dated: April 11, 2007

Respectfully submitted,



Gregory P. Durbin, Registration No. 42,503
Attorney for Applicant
USPTO Customer No. 20686

DORSEY & WHITNEY LLP
Republic Plaza Building, Suite 4700
370 Seventeenth Street
Denver, Colorado 80202-5647
Phone: (303) 629-3400
Fax: (303) 629-3450